Neo Kim Soon (Administrator of the estate of Phanna Mannechuang, deceased) v Subramaniam a/l Ramanaidu & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J-04-55-94
MAHADEV SHANKAR, VC GEORGE JJCA AND ABDUL MALEK J
2 AND 15 AUGUST 1995

Civil Law Act *— Damages — Fatal accident — Deceased made no financial contribution to upkeep husband and infant son — Husband employed housekeeper to take care of son in lieu of services provided by deceased — Whether claimable — Whether action should be brought by administrator or by husband and son in their personal capacities — Civil Law Act 1956 s 7*

On 1 May 1986, the plaintiff's wife ('the deceased') was killed in a motor accident, leaving behind their infant son. The accident was caused solely by the negligence of the first defendant. The plaintiff filed a suit in the sessions court. In the statement of claim, it was specifically pleaded that the action was brought in his capacity as the administrator of the deceased's estate under s 7 of the Civil Law Act 1956 ('the Act'), on his own behalf as the deceased's lawful husband and on behalf of his son. At the trial, the plaintiff gave evidence that by reason of the death of the deceased, he had to and would have to continue to employ a housekeeper to look after his son at a monthly wage of RM500. The sessions court judge found that a monthly expenditure of RM250 was reasonable for a period of 11½ years. However, the defendants appealed to the High Court on the grounds that: (i) no award could be made by reason of the deprivation of the services or society of a wife under the amended s 7(3) of the Act, unless the claimant could show actual dependency in the sense of receiving a financial contribution from the deceased; and (ii) the plaintiff and the son had to sue independently in their personal capacity for the housekeeper's wages as it was a claim for personal loss and not a claim for loss of support.

Held, allowing the appeal:

(1) (Per **Mahadev Shankar JCA**) What has been done away by the amended s 7(3) is an award of damages to a husband on the ground only that he has been deprived of the services or society of his wife. However, where a husband has not only lost his wife, but has also been put to monetary loss as a direct result of the negligence, such loss is recoverable even if the wife did not make any direct financial contribution to the husband. This is because s 7(3) provides that the negligent party should compensate the claimant not only for any loss of support, but also any reasonable expenses incurred as a result of the wrongful act.

(2) Although s 7(1) and (2) refer to the action by the personal representative as a representative action brought for the benefit of the surviving spouse, parent and child, s 7(3) has clearly allowed the recovery of all quantifiable loss directly caused by the wrongdoer and suffered by the specified persons. The presence of s 7(3)(iii) which specifically makes funeral expenses also recoverable in the same action reinforces this view.

(3) Wherever it can be shown by a parent, surviving spouse or child that actual quantifiable loss has been incurred in money or money's worth and will continue to be incurred as a direct result of the negligence of the wrongdoer, such loss will be recoverable even if there was no direct financial contribution made by the deceased to or on behalf of the person for whose benefit the action was brought.

Obiter:

Section 7(3)(iii) does not preclude damages to a child for being deprived of the services or society of his mother.

[Bahasa Malaysia summary

Pada 1 Mei 1986, isteri plaintif ('si mati') telah terbunuh di dalam suatu kemalangan jalanraya, dan meninggalkan seorang bayi lelaki. Kemalangan tersebut disebabkan semata-matanya oleh kecuaian defendan pertama. Plaintif telah memfailkan suatu guaman di mahkamah sesyen. Di dalam pernyataan tuntutan, telah dinyatakan dengan khususnya bahawa tindakan itu telah dibawa dalam keupayaannya sebagai pentadbir pusaka si mati di bawah s 7 Akta Undang-Undang Sivil 1956 ('Akta tersebut'), bagi pihak dirinya sendiri sebagai suami si mati yang sah dan bagi pihak anak lelakinya. Semasa perbicaraan, plaintif telah memberi keterangan bahawa akibat kematian si mati, beliau terpaksa menggaji dan terus menggaji seorang pengurus rumah untuk menjaga anak lelakinya pada gaji bulanan sebanyak RM500. Hakim mahkamah sesyen memutuskan bahawa perbelanjaan bulanan sejumlah RM250 adalah munasabah untuk tempoh selama 11½ tahun. Walau bagaimanapun, defendan telah merayu ke Mahkamah Tinggi atas alasan bahawa: (i) tiada award yang boleh dibuat atas alasan kehilangan perkhidmatan atau teman isteri di bawah s 7(3) yang terpinda, melainkan jika penuntut dapat menunjukkan bahawa pergantungan sebenar, iaitu beliau telah menerima sumbangan kewangan daripada si mati; dan (ii) plaintif dan anak lelakinya harus mendakwa secara berasingan di dalam keupayaan peribadi mereka sendiri untuk gaji pengurus rumah itu kerana ia merupakan suatu tuntutan untuk kerugian persendirian dan bukan untuk kehilangan sokongan.

Diputuskan, membenarkan rayuan itu:

(1) (Oleh **Mahadev Shankar HMR)** Apa yang telah dimansuhkan oleh s 7(3)(iii) yang terpinda ialah award ganti rugi kepada

A seorang suami atas sebab semata-matanya bahawa beliau telah kehilangan perkhidmatan atau teman daripada isterinya. Walau bagaimanapun, di mana seorang suami bukan sahaja kehilangan isterinya, tetapi telah mengalami kerugian dari segi kewangan yang diakibatkan oleh kecuaian secara terus, kerugian tersebut boleh didapatkan kembali, walaupun isteri itu tidak membuat apa-apa sumbangan kewangan kepada suaminya. Ini adalah kerana s 7(3) memperuntukkan bahawa pihak yang cuai harus membayar pampasan kepada penuntut bukan sahaja untuk sebarang kehilangan sokongan, tetapi juga sebarang perbelanjaan munasabah yang dialami akibat kelakuan salah itu.

C (2) Walaupun s 7(1) dan (2) merujuk kepada tindakan oleh wakil diri sebagai suatu tindakan perwakilan yang dibuat untuk faedah pasangan yang masih hidup, ibu bapa dan anak, s 7(3) dengan jelasnya membenarkan tuntutan kembali kesemua kerugian yang boleh dinyatakan kuantitinya yang disebabkan secara langsung oleh orang yang bersalah dan yang dialami oleh orang yang ditetapkan itu. Kehadiran s 7(3)(iii) yang secara khususnya membenarkan perbelanjaan pengembumian didapatkan kembali memperkukuhkan pendapat ini.

(3) Setiap kali ia boleh ditunjukkan oleh seorang ibu bapa, pasangan yang masih hidup atau anak bahawa kehilangan wang atau nilai wang yang boleh dikira telah dialami dan akan terus dialami sebagai akibat langsung kecuaian orang yang bersalah, kehilangan tersebut boleh didapatkan kembali walaupun tidak terdapat sumbangan kewangan terus yang dibuat oleh si mati kepada atau bagi pihak orang untuk mana tindakan itu dibawa.

F **Obiter:**

Seksyen 7(3)(iii) tidak menghalang seorang anak daripada mendapat ganti rugi kerana kehilangan perkhidmatan dan teman dari ibunya.]

G **Notes**

For cases on damages awarded in fatal accidents under the Civil Law Act 1956, see 1 *Mallal's Digest* (4th Ed) paras 1791–1817; [1992] Mallal's Digest 146.

H **Legislation referred to**

Civil Law Act 1956 s 7(1), (2), (3)

Appeal from: Civil Appeal No 12–66 of 1992 (High Court, Johor Bahru)

I *Chok Chin You* (*L Renganathan* with him) (*Loh & Renga*) for the appellant.

DC Alfred (*DC Alfred & Co*) for the respondents.

Cur Adv Vult

2 August 1995

Mahadev Shankar JCA: On 12 November 1984, Neo Kim Soon ('the plaintiff') married Phanna Maneechuang ('the deceased'). He was then 63 years old. His wife (the deceased) was then aged 32. A son, Teemee Maneechuang was born to them on 6 August 1985.

On 1 May 1986, the deceased was a passenger in a bus which met with an accident near Air Hitam, Johor. The deceased was killed. The accident was caused solely by the negligence of the bus driver, the first defendant.

The plaintiff filed a suit in the Sessions Court at Kulai. The statement of claim specifically pleaded that this action which the plaintiff brought in his capacity as the administrator of the deceased's estate, was under s 7 of the Civil Law Act 1956 and that it was brought on his own behalf as the lawful husband of the deceased and on behalf of his son.

At the trial, the plaintiff gave evidence that by reason of the death of the deceased, he had to employ and would have to continue to employ a housekeeper to look after his infant son at a monthly wage of RM500. The sessions court judge found that a monthly expenditure of RM250 was reasonable for a period of 11½ years.

In the High Court, the learned judge allowed the defendant's appeal. We reinstated the judgment of the sessions judge. Our reasons now follow.

The defendant's submission was that this claim was not recoverable by reason of the amendment to s 7(3) of the Civil Law Act 1956 by Act A602 of 1984 ('the said amendment'). Prior to the said amendment, s 7(1) provided for the survival of the cause of action where the death of a person is caused by negligence, and s 7(2), for the action to be brought by the personal representative of the deceased for the benefit of the surviving spouse, parent and child, and s 7(3) stated:

> In every such action the Court may give damages as it thinks fit proportioned to the loss resulting from the death to the parties respectively for whom and for whose benefit the action is brought ...

Since the damage contemplated by these words was 'the loss resulting from the death' such damage was not restricted to actual financial loss, and since the section required proportioning the damages, the section also contemplated that each of the persons for whose benefit the action was brought had an independent cause of action for his or her respective loss even though satisfaction was being provided in a single action.

The defendant then submitted that the said amendment had pruned the earlier remedy to the extent that unless the claimant could show actual dependency in the sense of receiving a financial contribution from the deceased, no award could be made by reason of the deprivation of the services or society of a wife. In the present case, it was submitted that since the deceased did not make any financial contribution to the upkeep of her husband or son, the money expended by the plaintiff for a housekeeper was really in *lieu* of the services which the deceased had provided, and was therefore irrecoverable.

A We need now to look at the new wording. Section 7(1) and (2) have not been altered. The old s 7(3) was deleted altogether. In its place a new sub-s (3) was substituted. For the present, it is sufficient to set out the words of the sub-section and provisos (ii) and (iii) which read as follows:

> The damages which the party who shall be liable under subsection (1) to
> B pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):
>
> Provided that —
>
> C ...
>
> (ii) damages may be awarded in respect of the funeral expenses of the person deceased if such expenses have been incurred by the party for whose benefit the action is brought;
>
> (iii) no damages shall be awarded to a parent on the ground *only* of his having been deprived of the services of a child; and no damages shall be
> D awarded to a husband on the ground *only* of his having been deprived of the services or society of his wife; ... (Emphasis added.)

Here, the plaintiff was making the claim both for himself and for his son. He was not claiming for the equivalent monetary value of the services provided by the deceased but the actual monetary expense he had paid to
E the housekeeper and would have to continue to pay the housekeeper to look after this boy for 11½ years from the date of the accident.

We agree with Mr Chok Chin You of counsel for the plaintiff/appellant that what has been done away with by the proviso (iii) is an award of damages, in this case to the deceased's husband, *only* on the
F ground that he has been deprived of the services or society of his wife. So far as a surviving husband is concerned, the proviso has abolished any award by way of general damages for loss of consortium. In other words, proof of the death of a wife, without more, will not entitle the surviving husband to an award in damages.

G It is a different matter altogether where a husband has not only lost his wife, but has also been put to monetary loss which has been the direct result of the negligence. Such loss in our view continues to be recoverable.

We say this because s 7(3) as it is presently worded not only empowers the court to compensate the claimant for any 'loss of support' but also for
H 'any reasonable expenses incurred as a result of the wrongful act'. We cannot agree with the respondents' counsel that the word 'together' in s 7(3) must be read to mean that unless monetary loss is first shown by way of loss of support, the claim for reasonable expenses cannot be sustained.

I Since the claim for the housekeeper's wages, not being a claim for loss of support, was a personal loss suffered by the plaintiff and his son, it was also submitted that the plaintiff and the son had to sue independently in their personal capacity for this loss in which case the plaintiff would have had to describe himself as the father and the next friend of his son in

the title to the action. With respect, we do not think this can be right. Although s 7(1) and (2) refer to the action by the personal representative as a representative action brought for the benefit of the relevant individuals, s 7(3) has clearly enlarged the scope of the damages which may be awarded by allowing recovery in the same action all quantifiable loss directly caused by the wrongdoer and suffered by the persons for whose benefit the action has been brought. The presence of proviso (ii) which specifically makes funeral expenses also recoverable in the same action reinforces this view.

As a matter of interest, we observe that proviso (iii) does not preclude damages to a child for having been deprived of the services or society of his mother but we do not think that it is necessary for this appeal to say anything more about this, except that it follows from what we have said that wherever it can be shown whether by a parent, a surviving spouse or a child that actual quantifiable loss has been incurred in money or money's worth and will continue to be incurred as a direct result of the negligence of the wrongdoer, such loss will be recoverable even if there was no direct financial contribution made by the deceased to or on behalf of the person for whose benefit the action was brought.

In the circumstances, we also ordered that the defendant pay the appellant his taxed costs both here and in the court below and for the deposit to be refunded to the appellant.

15 August 1995

VC George JCA: I have had the benefit of reading the judgment in draft of my learned brother, Mahadev Shankar JCA, and respectfully concur with it.

Appeal allowed.

Reported by Isabel Liong